

Explanation Of

HHS FORM NO. 441, ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES REGULATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Section 80.4 of the Department of Health and Human Services Regulation effectuating Title VI of the Civil Rights Act of 1964 requires that every application to the Department for Federal financial assistance shall contain or be accompanied by an Assurance that the program or facility to be assisted will be conducted or operated in compliance with Title VI of the Civil Rights Act and with all requirements imposed by or pursuant to the Department's Regulation.

Section 80.4 further provides that "the form of the foregoing Assurance and the extent to which like Assurances will be required of subgrantees, contractors, transferees, successors in interest and other participants," shall be specified by the responsible Department official. Under this authority, HHS Form No. 441 has been specified as the form of Assurance which shall apply to all applications for Federal financial assistance (except for continuing state programs which must meet the requirements of Section 80.4(b) and school districts availing themselves of Section 80.4(c) of the Regulation) submitted to the Department after January 3, 1965; also the circumstances have been specified under which an Applicant shall obtain comparable written Assurances of compliance from its subgrantees, contractors, and transferees. (See answers to Questions 11 and 12 below in this regard.)

HHS Form No. 441 constitutes a legally enforceable agreement to comply with Title VI of the Civil Rights Act of 1964, and with all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services issued thereunder. Applicants are urged to read the Department's Regulation before executing the Assurance.

The following explanation of the requirements of the Department's Regulation and the examples of the kinds of discriminatory practices prohibited by them are for the guidance of the Applicants.

1. *By executing the Assurance (HHS Form No. 441), what does an Applicant agree to do?*

A. The Applicant agrees to make no distinction on the ground of race, color, or national origin in providing to individuals any service, financial aid, or other benefit under any program receiving Federal financial assistance extended to the Applicant by the Department.

2. *What is meant by "distinction on the ground of race, color, or national origin"?*

A. "Distinction on the ground of race, color, or national origin" includes (1) any type of segregation, separate or different treatment, or other discrimination on that ground; (2) the imposition of any admission, enrollment quota, eligibility, or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit under a program or to be afforded an opportunity to participate in a program, if the race, color, or national origin of individuals is considered in determining whether they meet any such requirement or condition; (3) the use of membership in a group as a basis for the selection of individuals for any purpose, if in selecting members of the group there is discrimination on the ground of race, color, or national origin; and (4) the assignment of personnel to provide services, or the assignment of times or places for the provision of services, on the basis of the race, color, or national origin of the individuals to be served. It does not, however, include distinctions on the ground of race, color, or national origin determined by the responsible Department official to be necessary to the conduct of research or experimental programs having as their primary objective the discovery of new knowledge concerning special characteristics of particular racial or other ethnic groups.

3. *What is meant by “service, financial aid, or other benefit”?*

A. “Service, financial aid, or other benefit” under a program receiving Federal financial assistance includes any education or training, any evaluation, guidance, counseling, or placement service, any health, welfare, rehabilitation, housing, or recreational service, any referral of individuals for any of the foregoing services, any scholarship, fellowship or traineeship stipend or allowance, and any loan or other financial assistance or benefit (whether in cash or in kind), which is made available to individuals (1) with the aid of Federal financial assistance, or (2) with the aid of the Applicant’s or of other non-Federal funds required to be made available for the program as a condition to the receipt of Federal financial assistance, or (3) in or through a facility provided with the aid of Federal financial assistance or the non-Federal matching funds referred to in (2).

4. *What requirements are placed on the use of facilities?*

A. The Applicant agrees to make no distinction on the ground of race, color, or national origin in making available to individuals the use of any land, building, equipment, or other facility leased, acquired, constructed, improved, or equipped with the aid of Federal financial assistance extended to the Applicant by the Department, including--

- (a) the use of any room, dormitory, ward, or other space in the facility;
- (b) the use of any equipment in the facility;
- (c) the use of any office, waiting room, restroom, eating, recreational, concession, or other accommodation or convenience provided in the facility;
- (d) the use of any facility not provided with the aid of Federal financial assistance if the availability of such facility is required as a condition to the receipt of Federal financial assistance for the Federally-assisted facility.

5. *What requirements are placed on the opportunities to participate in a program receiving Federal assistance?*

A. The Applicant agrees to make no distinction on the ground of race, color, or national origin in affording opportunities to individuals to participate (other than as employees) in any program receiving Federal financial assistance extended by the Department to the Applicant, including opportunities to participate--

- (a) as providers of any service, financial aid, or other benefit to individuals under the program (e.g., as physicians, surgeons, dentists, or other professional practitioners seeking the privilege of practicing in a Federally-aided hospital or other facility),
- (b) as conferees, observers, consultants, or advisers, or as members of advisory or planning groups, or
- (c) as volunteers (e.g., as voluntary workers, or as patients or other subjects of study or experimentation in research, survey, demonstration, or like programs).

6. *Does that mean that an Applicant who signs the Department’s Assurance may nevertheless make distinctions among his employees on the basis of race, color, or national origin?*

A. Title VI of the Civil Rights Act does not concern itself with employment practices except where a primary objective of the Federal financial assistance is to provide employment. Thus, where a basic objective of the program is to provide employment, the Applicant’s employment practices are subject to the Department’s Regulation. However, even where this is not the case an Applicant may be precluded from engaging in any discriminatory employment practices under the provisions of Title VII of the Civil Rights Act, Executive Orders 10925 and 11114, and the Merit System Regulations.

7. *When an Applicant’s employment practices are covered by the Department’s Regulation, what requirements must be met?*

A. The Applicant agrees to make no distinction on the ground of race, color, or national origin in its employment practices (including recruitment or recruitment advertising, hiring, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities) with respect to individuals seeking employment or employed under any program receiving Federal financial assistance extended to the Applicant by the Department, in those programs where a primary objective of the Federal financial assistance is to provide employment to such individuals. This includes programs under which the employment is provided--

- (a) as a means of extending financial assistance to students or to needy persons,
- (b) to students, fellows, interns, residents, or others in training for related employment (including research associates or assistants in training for research work), or
- (c) to reduce unemployment or to provide remunerative activity to individuals who because of severe handicaps cannot be readily absorbed in the competitive labor market.

8. *What effect will the Regulation have on a college or university’s admission practices or other practices related to the treatment of students?*

A. An institution of higher education which applies for any Federal financial assistance of any kind must agree that it will make no distinction on the ground of race, color, or national origin in the admission practices or any other practices of the institution relating to the treatment of students.

- (a) “Student” includes any undergraduate, graduate, professional, or postgraduate student, fellow, intern, student, or other trainee receiving education or training from the institution.

(b) "Admission practices" include, recruiting and promotional activities, application requirements, eligibility conditions, qualifications, preferences, or quotas used in selecting individuals for admission to the institution or any program of the institution, as students.

(c) "Other practices relating to the treatment of students" include the affording to students of opportunities to participate in any educational, research, cultural, athletic, recreational, social, or other program or activity; the performance evaluation, discipline, counseling of students; making available to students any housing, eating, health, or recreational service; affording work opportunities, or scholarship, loan or other financial assistance to students and making available for the use of students any building, room, space, materials, equipment, or other facility or property.

9. *Does the Assurance of nondiscrimination apply to the entire operation of an institution?*

A. Insofar as the Assurance given by the Applicant relates to the admission or other treatment of individuals as students, patients, or clients of an institution of higher education, a school, hospital, nursing home, center or other institution owned or operated by the Applicant, or to the opportunity to participate in the provision of services, financial aid, or other benefits to such individuals, the Assurance applies to the entire institution. In the case of a public school system the Assurance would be applicable to all of the elementary or secondary schools operated by the Applicant.

10. *What about a university which operates several campuses?*

A. Section 80.4(d)(2) of the Regulation provides for a more limited Assurance only where an institution can demonstrate that the practices in part of its operation in no way affect its practice in the program for which it seeks Federal funds. This would be a rare case.

11. *If an Applicant intends to make use of other individuals to help carry out the Federally-assisted program, does the requirement not to discriminate apply to such a subgrantee or contractor?*

A. It does. The Applicant must require any individual, organization, or other entity which it utilizes, to which it subgrants, or with which it contracts or otherwise arranges to provide services, financial aid, or other benefits under, or to assist it in the conduct of, any program receiving Federal financial assistance extended to the Applicant by the Department, or with which it contracts or otherwise arranges for the use of any facility provided with the aid of Federal financial assistance for a purpose for which the Federal financial assistance was extended, to comply fully with Title VI of the Civil Rights Act of 1964 and the Regulation of the Department of Health and Human Services issued thereunder.

12. *Must this Assurance of nondiscrimination by the subgrantee, etc., be in writing?*

A. In the case (1) of any contractual or other arrangement with another such individual or entity which will continue for an indefinite period or for a period of more than three months, (2) of any subgrant, or (3) of any conveyance, lease, or other transfer of any real property or structures thereon provided with the aid of Federal financial assistance extended to the Applicant by the Department, the Applicant shall obtain from such other person, subgrantee, or transferee, an agreement, in writing, enforceable by the Applicant and by the United States, that such other individual or entity, subgrantee, or transferee will carry out its functions under such subgrant, or contractual or other arrangement, or will use the transferred property, as the case may be, in accordance with Title VI of the Act and the Regulation will otherwise comply herewith.

13. *What obligations does the Applicant have to inform beneficiaries, participants, and others of the provisions of the Regulation?*

A. The Applicant must make available to beneficiaries, participants, and other interested persons information regarding the provisions of the Regulation and protections against discrimination provided under Title VI of the Civil Rights Act. The Department will issue shortly more detailed instructions on carrying out this phase of the Regulation.

14. *What obligations does the Applicant have to keep records and to make them available to the Department?*

A. From time to time, Applicants may be required to submit reports to the Department, and the Regulation provides that the facilities of the Applicant and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the Regulation be made available for inspection during normal business hours on request of an officer or employee of the Department specifically authorized to make such inspections. More detailed instructions in this regard will also be forthcoming from the Department in the near future.

15. *Must separate Assurance forms be filed with each application?*

A. As a general rule once a valid Assurance is given it will apply to any further application as long as there is no indication of a failure to comply.